

Bureau of Indian Affairs, Interior

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problems that temporarily preclude continuing review; and

(2) Approval by the Assistant Secretary.

(b) Upon resolution of the technical or administrative problems that led to the suspension, the documented petition will have the same priority on the numbered register of documented petitions to the extent possible.

(1) OFA will notify the petitioner and those listed in § 83.22(d) when it suspends and when it resumes review of the documented petition.

(2) Upon the resumption of review, OFA will have the full six months to issue a proposed finding.

PROPOSED FINDING

§ 83.32 When will OFA issue a proposed finding?

(a) OFA will issue a proposed finding as shown in the following table:

| OFA must | within . . . |
|---|--|
| (1) Complete its review under Phase I and either issue a negative proposed finding and publish a notice of availability in the FEDERAL REGISTER, or proceed to review under Phase II. | six months after notifying the petitioner under § 83.25 that OFA has begun review of the petition. |
| (2) Complete its review under Phase II and issue a proposed finding and publish a notice of availability in the FEDERAL REGISTER. | six months after the deadline in paragraph (a)(1) of this section. |

(b) The times set out in paragraph (a) of this section will be suspended any time the Department is waiting for a response or additional information from the petitioner.

(c) OFA will strive to limit the proposed finding and any reports to no more than 100 pages, cumulatively, excluding source documents.

§ 83.33 What will the proposed finding include?

The proposed finding will summarize the evidence, reasoning, and analyses that are the basis for OFA's proposed finding regarding whether the petitioner meets the applicable criteria.

(a) A Phase I negative proposed finding will address that the petitioner fails to meet any one or more of the following criteria: Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), or Congressional Termination (§ 83.11(g)).

(b) A Phase II proposed finding will address whether the petitioner meets the following criteria: Indian Entity Existence (§ 83.11(a)), Community (§ 83.11(b)), and Political Influence/Authority (§ 83.11(c)).

§ 83.34 What notice of the proposed finding will OFA provide?

In addition to publishing notice of the proposed finding in the FEDERAL REGISTER, OFA will:

(a) Provide copies of the proposed finding and any supporting reports to the petitioner and those listed in § 83.22(d); and

(b) Publish the proposed finding and reports on the OFA Web site.

PROPOSED FINDING—COMMENT AND RESPONSE PERIODS, HEARING

§ 83.35 What opportunity to comment will there be after OFA issues the proposed finding?

(a) Publication of notice of the proposed finding will be followed by a 120-day comment period. During this comment period, the petitioner or any individual or entity may submit the following to OFA to rebut or support the proposed finding:

(1) Comments, with citations to and explanations of supporting evidence; and

(2) Evidence cited and explained in the comments.

(b) Any individual or entity that submits comments and evidence must provide the petitioner with a copy of their submission.

§ 83.36 What procedure follows the end of the comment period on a favorable proposed finding?

(a) At the end of the comment period for a favorable proposed finding, AS-IA will automatically issue a final determination acknowledging the petitioner as a federally recognized Indian tribe if OFA does not receive a timely objection with evidence challenging the proposed finding that the petitioner meets the acknowledgment criteria.

(b) If OFA has received a timely objection and evidence challenging the favorable proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence,

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and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 83.37 What procedure follows the end of the comment period on a negative proposed finding?

If OFA has received comments on the negative proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 83.38 What options does the petitioner have at the end of the response period on a negative proposed finding?

(a) At the end of the response period for a negative proposed finding, the petitioner will have 60 days to elect to challenge the proposed finding before an ALJ by sending to the Departmental Cases Hearings Division, Office of Hearings and Appeals, with a copy to OFA a written election of hearing that lists:

(1) Grounds for challenging the proposed finding, including issues of law and issues of material fact; and

(2) The witnesses and exhibits the petitioner intends to present at the hearing, other than solely for impeachment purposes, including:

(i) For each witness listed, his or her name, address, telephone number, and qualifications and a brief narrative summary of his or her expected testimony; and

(ii) For each exhibit listed, a statement confirming that the exhibit is in the administrative record reviewed by OFA or is a previous final determination of a petitioner issued by the Department.

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(b) The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this period.

§ 83.39 What is the procedure if the petitioner elects to have a hearing before an ALJ?

(a) If the petitioner elects a hearing to challenge the proposed finding before an ALJ, OFA will provide to the Departmental Cases Hearings Division, Office of Hearings and Appeals, copies of the negative proposed finding, critical documents from the administrative record that are central to the portions of the negative proposed finding at issue, and any comments and evidence and responses sent in response to the proposed finding.

(1) Within 5 business days after receipt of the petitioner's hearing election, OFA will send notice of the election to each of those listed in § 83.22(d) and the Departmental Cases Hearings Division by express mail or courier service for delivery on the next business day.

(2) OFA will retain custody of the entire, original administrative record.

(b) *Hearing process.* The assigned ALJ will conduct the hearing process in accordance with 43 CFR part 4, subpart K.

(c) *Hearing record.* The hearing will be on the record before an ALJ. The hearing record will become part of the record considered by AS-IA in reaching a final determination.

(d) *Recommended decision.* The ALJ will issue a recommended decision and forward it along with the hearing record to the AS-IA in accordance with the timeline and procedures in 43 CFR part 4, subpart K.

AS-IA EVALUATION AND PREPARATION OF FINAL DETERMINATION

§ 83.40 When will the Assistant Secretary begin review?

(a) AS-IA will begin his/her review in accordance with the following table:

| If the PF was: | And: | AS-IA will begin review upon: |
|--------------------|---|--|
| (1) Negative | The petitioner did not elect a hearing | Expiration of the period for the petitioner to elect a hearing. |
| (2) Negative | The petitioner elected a hearing | Receipt of the ALJ's recommended decision. |
| (3) Positive | No objections with evidence were received | Expiration of the comment period for the positive PF. |
| (4) Positive | Objections with evidence were received | Expiration of the period for the petitioner to respond to comments on the positive PF. |